

## § 306.1

that the term does not include biodiesel as defined in this part.

(l) *Biodiesel* means the monoalkyl esters of long chain fatty acids derived from plant or animal matter that meet: The registration requirements for fuels and fuel additives under 40 CFR part 79; and the requirements of ASTM standard D6751-10 “Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels (published October 2010).” The incorporation of ASTM D6751-10 by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of ASTM D6751B10 may be obtained from ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428, or may be inspected at the Federal Trade Commission, Public Reference Room, Room 130, 600 Pennsylvania Avenue, NW., Washington, DC, or at NARA. For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/cfr/ibr\\_locations.html](http://www.archives.gov/federal_register/cfr/ibr_locations.html).

(m) *Biodiesel blend* means a blend of petroleum-based diesel fuel with biodiesel.

(n) *Biomass-based diesel blend* means a blend of petroleum-based diesel fuel with biomass-based diesel.

[58 FR 41372, Aug. 3, 1993, as amended at 69 FR 18803, Apr. 9, 2004; 73 FR 40162, July 11, 2008; 76 FR 19690, Apr. 8, 2011]

### § 306.1 What this rule does.

This rule deals with the certification and posting of automotive fuel ratings in or affecting commerce as “commerce” is defined in the Federal Trade Commission Act, 15 U.S.C. 41 et seq. It applies to persons, partnerships, and corporations. If you are covered by this regulation, breaking any of its rules is an unfair or deceptive act or practice under section 5 of that Act. You can be fined up to \$10,000 (plus an adjustment for inflation, under §1.98 of this chapter) each time you break a rule.

[58 FR 41373, Aug. 3, 1993, as amended at 61 FR 54549, Oct. 21, 1996; 61 FR 55840, Oct. 29, 1996]

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### § 306.2 Who is covered.

You are covered by this rule if you are a refiner, importer, producer, distributor, or retailer of automotive fuel.

[58 FR 41373, Aug. 3, 1993]

### § 306.3 Stayed or invalid parts.

If any part of this rule is stayed or held invalid, the rest of it will stay in force.

[44 FR 19169, Mar. 30, 1979. Redesignated at 58 FR 41372, Aug. 3, 1993]

### § 306.4 Preemption.

The Petroleum Marketing Practices Act (“PMPA”), 15 U.S.C. 2801 et seq., as amended, is the law that directs the FTC to enact this rule. Section 204 of PMPA, 15 U.S.C. 2824, provides:

(a) To the extent that any provision of this title applies to any act or omission, no State or any political subdivision thereof may adopt or continue in effect, except as provided in subsection (b), any provision of law or regulation with respect to such act or omission, unless such provision of such law or regulation is the same as the applicable provision of this title.

(b) A State or political subdivision thereof may provide for any investigative or enforcement action, remedy, or penalty (including procedural actions necessary to carry out such investigative or enforcement actions, remedies, or penalties) with respect to any provision of law or regulation permitted by subsection (a).

[58 FR 41373, Aug. 3, 1993]

### DUTIES OF REFINERS, IMPORTERS AND PRODUCERS

### § 306.5 Automotive fuel rating.

If you are a refiner, importer, or producer, you must determine the automotive fuel rating of all automotive fuel before you transfer it. You can do that yourself or through a testing lab.

(a) To determine the automotive fuel rating of gasoline, add the research octane number and the motor octane number and divide by two, as explained by ASTM D4814-10b, “Standard Specifications for Automotive Spark-Ignition Engine Fuel,” (incorporated by reference, see §306.0(b)(2)). To determine the research octane and motor octane numbers you may either:

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(1) Use ASTM standard test method ASTM D2699-09, "Standard Test Method for Research Octane Number of Spark-Ignition Engine Fuel" (incorporated by reference, see §306.0(b)(2)), to determine the research octane number, and ASTM standard test method ASTM D2700-09, "Standard Test Method for Motor Octane Number of Spark-Ignition Engine Fuel" (incorporated by reference, see §306.0(b)(2)), to determine the motor octane number; or

(2) Use the test method set forth in ASTM D2885-10, "Standard Test Method for Determination of Octane Number of Spark-Ignition Engine Fuels by On-Line Direct Comparison Technique" (incorporated by reference, see §306.0(b)(2)).

(b) To determine automotive fuel ratings for alternative liquid automotive fuels other than biodiesel blends and biomass-based diesel blends, you must possess a reasonable basis, consisting of competent and reliable evidence, for the percentage by volume of the principal component of the alternative liquid automotive fuel that you must disclose. In the case of biodiesel blends, you must possess a reasonable basis, consisting of competent and reliable evidence, for the percentage of biodiesel contained in the fuel, and in the case of biomass-based diesel blends, you must possess a reasonable basis, consisting of competent and reliable evidence, for the percentage of biomass-based diesel contained in the fuel. You also must have a reasonable basis, consisting of competent and reliable evidence, for the minimum percentages by volume of other components that you choose to disclose.

[58 FR 41373, Aug. 3, 1993, as amended at 73 FR 40162, July 11, 2008; 76 FR 19690, Apr. 8, 2011]

### § 306.6 Certification.

In each transfer you make to anyone who is not a consumer, you must certify the automotive fuel rating of the automotive fuel consistent with your determination. You can do this in either of two ways:

(a) Include a delivery ticket or other paper with each transfer of automotive fuel. It may be an invoice, bill of lading, bill of sale, terminal ticket, delivery ticket, or any other written proof

of transfer. It must contain at least these four items:

- (1) Your name;
- (2) The name of the person to whom the automotive fuel is transferred;
- (3) The date of the transfer;
- (4) The automotive fuel rating. Octane rating numbers may be rounded off to a whole or half number equal to or less than the number determined by you.

(b) Give the person a letter or other written statement. This letter must include the date, your name, the other person's name, and the automotive fuel rating of any automotive fuel you will transfer to that person from the date of the letter onwards. Octane rating numbers may be rounded to a whole or half number equal to or less than the number determined by you. This letter of certification will be good until you transfer automotive fuel with a lower automotive fuel rating, except that a letter certifying the fuel rating of biomass-based diesel, biodiesel, a biomass-based diesel blend, or a biodiesel blend will be good only until you transfer those fuels with a different automotive fuel rating, whether the rating is higher or lower. When this happens, you must certify the automotive fuel rating of the new automotive fuel either with a delivery ticket or by sending a new letter of certification.

(c) When you transfer automotive fuel to a common carrier, you must certify the automotive fuel rating of the automotive fuel to the common carrier, either by letter or on the delivery ticket or other paper.

[58 FR 41373, Aug. 3, 1993, as amended at 59 FR 48798, Sept. 23, 1994; 73 FR 40163, July 11, 2008; 76 FR 19691, Apr. 8, 2011]

### § 306.7 Recordkeeping.

You must keep records of how you determined automotive fuel ratings for one year. They must be available for inspection by Federal Trade Commission and Environmental Protection Agency staff members, or by people authorized by FTC or EPA.

[58 FR 41374, Aug. 3, 1993]